

03-1601 RANCHO PALOS VERDES, CA V. ABRAMS

DECISION BELOW: 354 F3d 1094

LOWER COURT CASE NUMBER: 02-55681

QUESTION PRESENTED:

The Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended by the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq., expressly preserves "the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities," such as antenna towers used to provide cellular telephone service. 47 U.S.C. § 332(c)(7)(A). The Act also establishes limits on that state and local authority, requiring (among other things) that state and local decisions regulating the placement and construction of wireless service facilities be in writing, be supported by substantial evidence, not unreasonably discriminate among providers of functionally equivalent services, and not have the effect of preventing the provision of wireless telephone service. 47 U.S.C. § 332(c)(7)(B)(i), (iii). The Act further provides an express cause of action through which "[a]ny person adversely affected" by a decision alleged to be contrary to those limits may seek judicial review, subject to a 30-day limitations period. 47 U.S.C. § 332(c)(7)(B)(v). The question presented is:

Whether, as held below but contrary to decisions of the Third and Seventh Circuits, the limits on state and local zoning and land-use authority established by Section 332(c)(7)(B) of the Communications Act may be enforced through an action for damages and attorney's fees under 42 U.S.C. §§ 1983 and 1988.

CERT. GRANTED 9/28/2004